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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,566	07/21/2004	Deok-kee Kim	FIS920040057 (00750489AA)	4565
30743 7590 06/26/2007 WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190			EXAMINER ARENA, ANDREW OWENS	
			ART UNIT 2811	PAPER NUMBER
			MAIL DATE 06/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/710,566

Applicant(s)

KIM ET AL.

Examiner

Andrew O. Arena

Art Unit

2811

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1-20.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
LYNNE GURLEY  
SUPERVISORY PATENT EXAMINER  
AU 2811, TC 2800

Continuation of 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: The arguments are not persuasive.

The arguments that "the Examiner explicitly accords no weight to this recitation..." (reply pg 8 para 1) and that "without any authority to do so" (reply pg 8 para 2) fail to distinguish the claimed invention from the applied reference.

Claim 1 is rejected under 35 USC 102(e) as anticipated by Hummler.

The claimed steps of "reducing height of structures in said first and second areas" are anticipated by Hummler.

The clause "to control step height" has been carefully considered to determine exactly what limitations it imposes and whether it has any "capacity to distinguish" (reply pg 9 para 2), however, said language simply expresses the intended result of a process step positively recited (and anticipated by the reference); therefore the clause is not given weight, as indicated in the office action of 04/03/2007 (pg 2) by explicitly citing authority from MPEP 2111.04.

Corollary: the term "control" is not specifically defined in the application and must be given its plain meaning as per MPEP 2111.01; the language "control step height" therefore requires nothing more than "reducing height of structures in said first and second areas".

The observation that "the Examiner relies on separate steps in Hummler" (reply pg 8 para 2) fails to distinguish the claimed invention from the applied reference since nothing in the claim language requires that both recited height reductions happen in a single step. Limitations from the specification are not read into the claims. See MPEP 2145(VI).

The observation that "the etching depicted in Figures 7A and 8 is for the purpose of..." fails to distinguish the claimed invention from the applied reference since the claim language "reducing height of structures in in said first...area" reads onto said etching; the prior art's purpose is therefore not germane to the rejection.

The mention of "which (existing) structure has already been recited in the claim" is misleading since nothing in the claim language requires that said separately recited structures are the same structures.

The allegation that "Hummler certainly does not disclose or even contemplate any meritorious effects..." fails to distinguish the claimed invention from the applied reference since the claim language reads on, and is therefore anticipated by, the disclosure of Hummler. Anticipation holds regardless of whether or not applicant and prior art had similar reasons for achieving the claimed invention.

The allegation that "Hummler does not teach using a polysilicon block out mask comprising two layers..." (reply: bottom pg 9 - top pg 10) is not germane to the present rejection since the claim does not require two layers.

The claim language recites "a polysilicon...mask OR a...mask having two layers"; Hummler discloses the polysilicon mask (col 6 ln 17-21) and therefore anticipates the claims without consideration of the additionally recited, but optional, two layers.

The arguments that "no planarizing effect is attributed [to RIE] in Hummler" (pg 10 para 2) are not convincing. The discussion in Hummler at col 6 ln 66 - col 7 ln 17 pertains to the portion of the disclosed method shown in Figs 9, 10A, and 10B, which clearly depicts a planarizing effect. In particular, the recitation "remove portions of 50 and liner 54...as shown in Figs 10A and 10B" (col 7 ln 7-9) is clearly the identification of a planarizing effect, even if such effect is accomplished as arguably only a consequence of another stated goal.

The arguments that RIE "is not necessarily sufficiently non-selective for planarization...absent the particular conditions...in...the present specification" (reply pg 10 para 2) and that "RIE does not imply a planar surface" (reply pg 11 para 1) are not convincing.

Most importantly, even if RIE were not necessarily sufficient for planarization, the RIE disclosed particularly in Hummler clearly achieves the claimed planarization.

Besides, the "particular conditions...of the present specification" are not recited in the claims. See MPEP 2145(VI).

Corollary: the "particular conditions...of the present specification" are not necessarily the only conditions capable of achieving planarity.

The allegation of hindsight (reply pg 11) is: first of all, not germane to anticipation; and second, not convincing since all teachings come expressly from the prior art no reliance is made on knowledge gleaned only from the present application. See MPEP 2145(X)(A).

All arguments have been addressed and none are considered persuasive.

The claims remain rejected exactly as in the office action dated 04/03/2007.



Andrew O Arena  
14 June 2007